

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-424-C - ORDER NO. 95-25✓
JANUARY 24, 1995

IN RE: Application of Interstate Fibernet, J.V.)
for a Certificate of Public Convenience) ORDER
and Necessity to Provide Intrastate) APPROVING
Telecommunications Services as a Carriers') CERTIFICATE
Carrier.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Interstate Fibernet, J.V. (Interstate or the Company) requesting authority to provide intrastate facilities-based interexchange telecommunications services as a carriers' carrier in South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (1976, as amended) and the regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Interstate to publish one time a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Interstate's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Interstate complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone and Telegraph Company (Southern Bell), GTE South, Incorporated (GTE),

the Consumer Advocate for the State of South Carolina (the Consumer Advocate), the South Carolina Telephone Association (SCTA), and Palmetto Net, Incorporated. As of the time of the hearing, all intervenors, with the exception of the Consumer Advocate for the State of South Carolina, have moved to withdraw their interventions. The Commission grants these motions.

A hearing was commenced on January 5, 1995, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Rudolph Mitchell, Chairman, presided. B. Craig Collins, Esquire, appeared on behalf of Interstate; Elliott F. Elam, Jr., Esquire, appeared on behalf of the Consumer Advocate for the State of South Carolina; F. David Butler, General Counsel, represented the Commission Staff.

In support of its Application, Interstate presented the testimony of Steven D. Moses, Vice-President of Network Planning for the Telecommunications Group of ITC Holding Company, who also functions as Vice-President and Chief Operating Officer of the Applicant, Interstate Fibernet, J.V. Moses explained the Applicant's request for authority to provide facilities-based interexchange telecommunications services as a carriers' carrier in South Carolina. Moses explained that by a "carriers' carrier" he meant providing bulk long distance service for authorized telecommunications carriers to and from Points of Presence (POPS). Moses explained that a Point of Presence is a point on Interstate's system where the interoffice channels and local distribution facilities are terminated.

Moses explained that Interstate proposes to construct, own, and operate a fiber optic telecommunications network and make

available to the public transmission capacity through point-to-point digital private line services on a carriers' carrier basis. In other words, Moses explained, Interstate's customers would lease capacity on the system from one POP to another. The long distance company could then resell this capacity in smaller increments to its own customers. Moses explained that as a carriers' carrier, Interstate would offer high capacity band width and that its customers would lease capacity for purposes of redundancy and diversity to their existing networks and for related capabilities. Interstate's services would only be provided to certified communications carriers and not end users.

Moses explained that Interstate intends to furnish its services to other communications carriers pursuant to negotiated contracts. Moses requested that, due to the competitive nature of the market in which Interstate's services would be provided, Interstate would need greater flexibility in offering services to its customers. For this reason, Interstate requested that it not be required to file tariffs with the Commission, but instead, file copies of its service contracts under seal.

Moses noted that Interstate presently operates approximately 400 miles of fiber optic network, and is certified to provide intrastate telecommunications services as a carriers' carrier in the states of Alabama and Georgia. Moses stated that the granting of Interstate's Application would be in the public interest, and that Interstate has sufficient financial resources to construct and operate the necessary facilities and to provide the proposed service properly and continually.

We note parenthetically that Interstate is a joint venture which operates a fiber optic telecommunications network as a carriers' carrier. Originally, the joint venture consisted of 51% owned by MPX Systems, Incorporated, a subsidiary of SCANA, and 49% by ITC Transmission Systems, Incorporated, a Delaware corporation, which is a wholly owned subsidiary of ITC Holding Company. According to Moses, on August 17, 1994, MPX's entire interest in the joint venture was acquired by ITC Transmission Systems II, Incorporated, a Delaware Corporation, which is also a wholly owned subsidiary of ITC Holding Company. In consideration for the transfer of its interest in the joint venture, MPX received a small minority interest in ITC Holding Company, amounting to approximately 3% of the outstanding shares of common stock. As a result, according to Moses, MPX no longer has any ownership interest in or control over Interstate, nor, apparently, does MPX have any interest in or control over ITC Transmission Systems or ITC Transmission Systems, II, the owners of Interstate.

FINDINGS OF FACT

1. Interstate is a joint venture between ITC Transmission Systems and ITC Transmission Systems, II, which are Delaware corporations authorized to transact business in the State of South Carolina by the Secretary of State.
2. Interstate operates facility-based interexchange telecommunications services as a carriers' carrier.
3. Interstate has the experience, capability, and financial resources to provide services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Interstate to provide facilities based interexchange telecommunications services as a carriers' carrier in South Carolina. We define a carriers' carrier as providing bulk long distance service for authorized telecommunications carriers to and from Points of Presence.

2. The Commission approves Interstate's proposal to file sealed contracts with the Commission in lieu of tariffs due to the fact that the Company must negotiate each contract separately with its customers.

3. We believe that the guidelines heretofore adopted by this Commission for Palmetto Net, Incorporated in Order No. 89-633 dated June 30, 1989 in Docket No. 88-445-C apply in the present case. We believe, as we did in that case, that it is in the public interest that Interstate be allowed to carry both interLATA and intraLATA telecommunications traffic for all types of telecommunications carriers on a carriers' carrier basis (i.e. non-switched point-to-point telecommunications service) so long as the telecommunications carrier has the authority to carry such traffic. Further, telecommunications carriers having originating and terminating interLATA traffic may transport such traffic between an interLATA carrier's POP and a telecommunications carrier's switch by the appropriate means of their choice.

4. When intraLATA traffic is transported between two connecting telecommunications carriers, the point of connection

should be negotiated in good faith and agreed to by the carriers, however, if no agreement is reached, either carrier may seek a final determination from the Commission.

5. Although we hold that MPX, the subsidiary of SCANA, owns only a 3% interest in the holding company of the companies that are carrying out the joint venture, we certainly agree with the argument of the Consumer Advocate at the hearing that Staff should continue to audit the use of SCANA utility property to assure the absence of cross-subsidization of non-regulated ventures by regulated companies, a subject addressed in Docket No. 89-230-E/G.

IT IS THEREFORE ORDERED THAT:

1. Interstate is hereby granted a Certificate of Public Convenience and Necessity so as to allow it to provide intrastate non-switched point to point service to all telecommunications carriers certified by the Commission as provided for herein.

2. The Company may file sealed contracts with the Commission in lieu of tariffs within thirty (30) days of execution.

3. Telecommunications carriers having originating and terminating interLATA traffic may transport such traffic between an interLATA carrier's POP and their switch by the appropriate means of their choice.

4. That when intraLATA traffic is transported between two connecting telecommunications carriers, the point of connection must be negotiated in good faith and agreed to by the carriers, however, if no agreement is reached, either carrier may seek a final determination from the Commission.

5. All Motions to Withdraw by intervenors are granted.

6. Interstate must keep appropriate records as required by law and this Commission.

7. Interstate must abide by the Rules and Regulations of the Commission.

8. Interstate shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

9. Interstate is required to operate under the regulatory framework as set out in this Order.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12 MONTHS
ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL
AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).